

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNIVERSAL CITY STUDIOS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	82 Civ. 4259
	)	
NINTENDO CO, LTD., and	)	
NINTENDO OF AMERICA, INC.,	)	
	)	
Defendants.	)	

The deposition of RANDY RISSMAN, called by the defendant for examination, pursuant to subpoena and pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Diane J. Capp, C.S.R., a notary public within and for the County of Cook and State of Illinois, at Suite 7300, 200 East Randolph Drive, Chicago, Illinois, on Wednesday, February 16, 1983, at 9:00 o'clock a.m.

Reported for
LAKE SHORE REPORTING SERVICE, by
Diane J. Capp

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Q Did you regularly attend these shows?

A Yes.

Q Did you attend any in 1981?

A Yes.

Q Which ones.

A Specifically, I don't remember, but

in general I'm sure those variety of shows.

Q Did you also attend toy shows or trade shows in 1982?

A Yes.

Q Do you recall which ones?

A Same.

Q Do you regularly read trade journals?

A Yes.

Q Which ones?

A Many.

Q Are you familiar with a game called Donkey Kong?

A Yes.

Q When did you first become aware of the Donkey Kong game?

A I believe sometime in, I believe it was 1981.

Q How did you become aware of it?

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1 A I viewed it in Tokyo in an arcade
2 with many other games.

3 Q Do you recall more specifically when
4 in 1981 you were in Tokyo?

5 A It was probably late summer, early fall.

6 Q Were you with anyone else when you saw
7 the game?

8 A I don't recall.

9 Q Did you play the game at that time?

10 A I don't believe so.

11 Q Have you played it since?

12 A Yes.

13 Q Do you own a Donkey Kong game?

14 A No, I don't.

15 Q Does Tiger Electronic Toys have in its
16 possession a Donkey Kong game?

17 A I believe so.

18 Q Do you know when they acquired it?

19 A No, I don't.

20 Q Was it subsequent to your trip to
21 Tokyo in 1981?

22 A I believe so.

23 Q Do you know how long after that?

24 A No, I don't.

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1 with Counsel.

2 Q For what games have you obtained
3 trademark licenses?

4 MR. KAPLAN: I will object to the question.
5 It's not being relevant to any issue in the
6 lawsuit for which we appear, not being likely
7 to lead to admissible evidence, and also, on the
8 basis that this is proprietary and confidential
9 information.

10 MS. O'NEILL: Q Did you obtain a trademark
11 license from Universal?

12 A Yes.

13 Q Did you obtain a copyright license
14 from Universal?

15 A Yes.

16 MR. KAPLAN: I would note a general objection,
17 Counsel. You are questioning a layman to the
18 extent that those terms have legal meanings,
19 and the witness has answered in the positive.
20 I do not know that he understands the impact
21 of the legal meaning of those terms.
22

23 MS. O'NEILL: Q Mr. Rissman, did there
24 come a time when Tiger decided to produce an
electronic game utilizing the idea of a monkey

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1 holding a woman captive on top of a structure?

2 A Yes.

3 Q When was that decision made?

4 A Approximately the time when we sought
5 and received the license from Universal.

6 MR. KAPLAN: If I may for one moment, may
7 I hear the question again.

8 (The question was read.)

9 THE WITNESS: A One other clarification,
10 not a monkey, but an ape.

11 MS. O'NEILL: Q Who made the decision?

12 A I believe it was my decision.

13 Q Did you discuss this decision with
14 anyone else at Tiger Electronic Toys?

15 A Yes.

16 Q With whom?

17 A Mr. Pasco.

18 Q Did you discuss this decision with
19 anyone at Tiger Hong Kong?

20 A No, not to my knowledge.

21 Q Was this decision made before your
22 trip to Tokyo in 1981?

23 A No.

24 Q Was it made after your trip to Tokyo

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1 in 1981?

2 A Yes.

3 Q On what basis was the decision made?

4 A General marketing considerations.

5 Q Was a name given to the game?

6 MR. KAPLAN: I want to object to the form
7 of the question in that it presumes in the
8 question that first the game was thought of,
9 and then a name was given to it when that has
10 not been a determination of fact that such was
11 the procedure at all.

12 MS. O'NEILL: Q Did you decide on a name
13 for the game either before or after deciding to
14 produce the game, to go ahead with the game?

15 A The name and the game were very much
16 dependent upon the license which we received
17 and engaged in.

18 Q Did there come a time when Tiger
19 contacted Universal?

20 A Yes.

21 Q In what connection?

22 A To license the name, the agreement
23 which we entered into with respect to King Kong.

24 Q Prior to contacting Universal, did you

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1 contact anyone else with respect to a license?

2 MR. KAPLAN: For what?

3 MS. O'NEILL: Q For this game?

4 A I don't recall.

5 Q How did you determine that you should
6 contact Universal with respect to obtaining
7 a license for a King Kong game?

8 A We tried to find out who owned the
9 rights to King Kong, found that out, and contacted
10 Universal.

11 Q And how did you try to determine, or
12 how did you find out that Universal had the
13 rights, if any.

14 A I don't recall.

15 Q Was a trademark search undertaken
16 with respect --

17 A Not to my knowledge.

18 Q -- to the name King Kong? Did you
19 contact anyone in the trade with respect to
20 King Kong?

21 A It's possible.

22 Q Were you personally involved in the
23 determination that you should contact Universal?

24 A Yes.

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1 Q What rights did you believe Universal
2 had with respect to the name King Kong?

3 A As a layman, as I understand, Universal
4 had full rights with respect to the King Kong
5 name, trademark, story, copyrights, everything
6 that you think of with respect to King Kong.

7 Q What was the basis for your understanding?

8 A They represented it to us. We entered
9 into a license agreement.

10 Q Did Tiger ask for proof that they had
11 rights in King Kong?

12 A I believe so.

13 Q Did Universal offer such proof?

14 A Put it in the contract.

15 Q Did they orally tell you that they had
16 such rights?

17 A I believe so.

18 Q Who were you dealing with at Universal?

19 A With two parties, Mr. Adler and
20 Miss Sifuentes.

21 Q Were you involved in the initial contact
22 with Universal?

23 A No.

24 Q Who was involved?

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1 Q Directing your attention to page two
2 of the letter --

3 MR. KAPLAN: Off the record.

4 (There was a discussion
5 off the record.)

6 MS. O'NEILL: Q Directing your attention
7 to the heading, Projected Unit Sales, do you
8 know who was responsible for making the
9 projections listed there?

10 A I don't recall specifically.

11 Q Do you know on what basis these projec-
12 tions were made?

13 A This specific instance, I don't know.

14 Q What considerations went into
15 determining the decision to market a King Kong
16 game?

17 A King Kong is a very recognized, well-
18 known title and entity around the world.

19 Q In considering whether to market a
20 King Kong game, did you consider the popularity
21 of any other video games?

22 A It's possible.

23 Q Did you consider the popularity of a
24 Donkey Kong game?

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1 A To my knowledge, at the time we
2 entered into this license agreement, Donkey
3 Kong was not popular.

4 Q Did you consider the game itself?

5 MR. KAPLAN: I don't understand the question.
6 What do you mean, did he market the game itself?

7 MS. O'NEILL: Q Did you discuss with
8 anyone the Donkey Kong game?

9 MR. KAPLAN: In what regard?

10 MS. O'NEILL: During this time --

11 MR. KAPLAN: In what regard, Counsel?

12 MS. O'NEILL: In regard to the considerations
13 which were made by Tiger with respect to marketing
14 a King Kong game.

15 Q In considering whether to market
16 a King Kong game, did the Donkey Kong game enter
17 into your considerations?

18 A Yes.

19 Q In what respect?

20 A General marketing considerations.

21 Q Can you explain what you mean by
22 general marketing considerations?

23 MR. KAPLAN: I would note for the record
24 that the term itself explains that.

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1 I would say in at least May.

2 Q May?

3 A '82.

4 Q Was any kind of game in any other kind
5 of form available prior to May, 1982?

6 A Not working.

7 Q What was available?

8 A There were what we call non-working,
9 mock-up samples.

10 Q Does a non-working, mock-up game show
11 a display board or screen?

12 A You have to clarify what game.

13 Q What is a non-working, mock-up game?

14 A Well, for example, a photographic
15 sample which you've seen in our catalog.

16 Q In connection with which game did you
17 have a non-working, mock-up game?

18 A Our table-top and hand-held.

19 Q Do you recall when the non-working,
20 mock-up, table-top game was produced -- was
21 made available?

22 A To?

23 Q To you.

24 A Well, we had it available for

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1 photographic purposes prior to printing of our
2 '82 catalog which had to be sometime prior to
3 December of '81. The catalog was available
4 January of '82.

5 MS. O'NEILL: I'd like to have the reporter
6 mark for identification Exhibit No. 6, a document
7 entitled Tiger Electronic Toys & Games, 1982.

8 (The document referred
9 to was marked Rissman
10 Deposition Exhibit 6
11 for Identification.)

12 MS. O'NEILL: Q Do you recognize this
13 document?

14 A Yes.

15 Q Can you describe what it is?

16 A It's our 1982 catalog.

17 MR. KAPLAN: Excuse me, for clarity of the
18 record and because I would like you to answer
19 the questions specifically, is that, in fact,
20 Tiger's 1982 catalog or is it a copy?

21 THE WITNESS: It's a Xerox of our catalog.

22 MR. KAPLAN: And it also has three holes
23 that Counsel has punched in for convenience of
24 storing this particular exhibit. Does your

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1 catalog have that?

2 THE WITNESS: No.

3 MS. O'NEILL: Q Mr. Rissman, is this the
4 catalog which was available in January of 1982?

5 MR. KAPLAN: We've already determined it's
6 a copy.

7 THE WITNESS: A Yes, it is a copy of the
8 catalog.

9 MS. O'NEILL: Q I direct your attention
10 to the third page of the exhibit.

11 A Which item are you referring to?

12 Q Are you on the page entitled, "King Kong
13 Electronic Games"?

14 A Yes.

15 Q And I direct your attention to the
16 first large photograph. Can you describe what
17 that is?

18 MR. KAPLAN: I would object, Counsel, the
19 photograph is what it is. What is the purpose
20 of having a witness describe for the record
21 what the photograph is?

22 MS. O'NEILL: The witness has just described
23 at one point in time they had a non-working,
24 mock-up game, and I want to know whether that

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breach of its license agreement?

A I don't think I can speak for Universal.

Q Did there come a time when Universal informed you that it considered Tiger to be in breach of its license agreement?

A Yes.

Q When was that?

A It was sometime during the first half of 1982. I don't recall the exact date.

MS. O'NEILL: I'd like the reporter to mark as Exhibit No. 8 a telegram dated May 4, 1982, addressed to Randy Rissman from Miss Sifuentes and/or Mr. Adler.

MR. KAPLAN: Objection to the description of the exhibit as a telegram.

MS. O'NEILL: A copy of a telegram.

MR. KAPLAN: Whatever it is, the exhibit will speak for itself, absent Counsel's categorization.

(The document referred to was marked Rissman Deposition Exhibit 8 for Identification.)

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1 MS. O'NEILL: Q You have reviewed the
2 document?

3 A Yes.

4 Q The wire communication?

5 A Yes.

6 Q Mr. Rissman, prior to receiving --
7 or, do you recall receiving this document?

8 A Yes.

9 Q Prior to receiving this document,
10 did you have a conversation with anyone at
11 Universal?

12 A Yes.

13 (There was a discussion
14 off the record.)

15 MS. O'NEILL: Q Mr. Rissman, after consulting
16 with your Counsel, do you wish to change your
17 testimony?

18 A I'm sure I have seen the wording in
19 this document. Whether it was a physical
20 document, I'm not sure. I have seen the essence
21 of the document.

22 Q Now, with respect to the conversation
23 you had prior to receiving this communication,
24 with whom did you have that conversation?

A001571

33
1 that it wasn't the exact communication, and
2 although he doesn't know he received the
3 exact communications, he saw the words in some
4 form.

5 MR. KAPLAN: I don't recall if I got the
6 Exhibit 8. It does not seem that a document
7 was sent outside of Universal.

8 MS. O'NEILL: Q Did you receive a communi-
9 cation from Universal on May 4, 1982?

10 A I don't recall.

11 Q Did you see a communication --

12 MR. KAPLAN: Off the record.

13 (There was a discussion
14 off the record.)

15 THE WITNESS: I am sure we responded.

16 MS. O'NEILL: Q Do you recall the substance
17 of your response?

18 A It would have been either telephone
19 and/or a letter from Mr. Kaplan.

20 Q Do you recall sending Universal a
21 product or sample product after this?

22 A We sent them something, based on their
23 request.

24 MS. O'NEILL: I'd like the reporter to mark

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1 as Exhibit 9 for Identification a letter dated
2 May 5, 1982, from Randy Rissman to Miss Sifuentes.

3 (The document referred
4 to was marked Rissman
5 Deposition Exhibit 9
6 for Identification.)

7 MS. O'NEILL: Q Do you recall ever seeing
8 this letter?

9 A Yes.

10 Q Is that your signature at the bottom
11 here?

12 A Definitely.

13 Q Do you recall signing this letter?

14 A Yes.

15 Q Does this refresh your recollection
16 as to what response you made after the
17 communication?

18 A We sent them the material.

19 Q Is the material that you sent them,
20 do you recall whether you sent the mock-up
21 game or actual games, working games?

22 A Neither.

23 Q What form were the games in that
24 you sent them, if you recall?

A001573

1 Q Is that your signature?

2 A Yes, it is.

3 Q Does this refresh your recollection
4 as to when the meeting you have previously
5 described occurred?

6 A Well, it was sometime between the
7 4th of June and the receipt of the telegram.

8 Q After the meeting, was the King Kong
9 product changed?

10 A No.

11 Q In the letter, it states, "please
12 note the changes we talked about."

13 A Yes.

14 Q Can you explain what you meant by
15 that?

16 A Changes were made prior to the
17 meeting.

18 Q Did Universal request information
19 with respect to what changes had been made?

20 A We presented it at the meeting.

21 Q Can you describe now what changes
22 were made?

23 A I think the letter speaks for itself.

24 Q We are talking about changes in a

A001574

1 game. What was the initial game to which changes
2 were made?

3 A Again, I think it's explained in the
4 letter.

5 Q I'm not clear as to what game was
6 changed?

7 A This was the table-top game.

8 Q Table-top game? At what stage was the
9 table-top game, or when was the first table-top
10 game produced?

11 A I believe sometime during the summer
12 of '82, subsequent to this.

13 Q Subsequent to the production of the
14 first table-top game, was the game changed?

15 A Yes.

16 Q Was it changed at the request of
17 Universal?

18 A As I said before, I don't think so.
19 I think it was something that we decided to do
20 ourselves.

21 Q Do you recall why?

22 A We wanted the game to be more playable.

23 Q Did you submit the table-top game
24 which was produced, which was first produced

A001575

1 in the summer of 1982 to Universal for its
2 approval.

3 A Yes.

4 Q And did they approve it?

5 A In our opinion, yes.

6 Q Changes were later made to that game?

7 A No. What we produced in our opinion
8 was approved by Universal.

9 Q The first game which you produced to
10 which changes were made, was that game submitted
11 to Universal?

12 A We only produced one.

13 Q One game was produced?

14 A You are talking about a category, one
15 game in a category, as made and produced. We
16 never released, in our opinion, to the market
17 an unapproved product.

18 Q At the meeting with Universal in
19 which you discussed changes made to the game,
20 what game were you referring to?

21 A Primarily the table-top.

22 Q A table-top game which had not been
23 produced?

24 A Correct.

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1 Q At what stage in production was that
2 table-top game, if any?

3 A In development.

4 Q And who was developing that game?

5 A We were, Tiger.

6 Q Had it been displayed?

7 A Yes.

8 Q Where?

9 A Mock-ups had been displayed, as I
10 indicated, in the January C. E. Show and
11 February Toy Fair.

12 Q Was it this game pre-production, the
13 pre-production game which Universal objected to?

14 A Yes.

15 Q Can you recall how the building outline
16 was changed?

17 A No.

18 Q Can you recall how the horizontal floors
19 were changed?

20 A Yes.

21 Q How were they changed?

22 A They were made horizontal.

23 Q What were they before?

24 A They were zigzag.

A001577

1 Q Were there bombs in the pre-production
2 game?

3 A I believe -- no.

4 Q So the bombs, introduction of the
5 bombs into the game was a change?

6 A Yes.

7 Q Were there firemen in the pre-production
8 game?

9 A There was a fireman without a fire
10 hat.

11 Q What did the fireman look like?

12 A A fireman without a hat.

13 Q I take it that the change was to put
14 a fire hat on the fireman?

15 A Yes.

16 Q Was the game play changed in any
17 manner?

18 A No.

19 Q So, other than the building outline,
20 changing the position of the floors, adding
21 bombs, and adding a fire hat, were there any
22 other changes?

23 A Not to my recollection.

24 Q Do you wish to change your answer

A001578